Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 84-1681

# In the Supreme Court of the United States

OCTOBER TERM, 1985

MASTER PRINTERS OF AMERICA, PETITIONER

*v.*

WILLIAM E. BROCK, SECRETARY OF LABOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT**

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In a supplemental brief filed on September 19, 1985 (and received by our Office on September 23), petitioner contends that certiorari is warranted in this case in light of the July 22 decision of the Eighth Circuit in *Donovan* v. *The Rose Law Firm*, 768 F.2d 964 (1985). That contention is incorrect for two reasons.

First, the decision in *Rose Law Firm* addressed the proper construction of the "persuader" annual reporting requirement in Section 203 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 433; it explicitly did not reach the issue of the constitutionality of Section 203 (see 768 F.2d at 966, 975). In contrast, the petition in this case presents no question of statutory interpretation under Section 203, but instead is confined to a constitutional attack on the validity of that provision. Indeed, while petitioner asserted several statutory issues in

the lower courts at earlier stages of the litigation, it never raised the question of the scope of the annual reporting requirement that was decided in *Rose Law Firm*; consequently, it did not properly preserve the statutory issue below and cannot be heard at this late date to object on that ground. Nor would resolution of that statutory issue in petitioner's favor avoid the constitutional questions presented in the petition, for, as petitioner concedes (Supp. Br. 4), it would still be required to make disclosures relating to nearly 1000 of its members. Thus, contrary to petitioner's assertion, *Rose Law Firm* does not conflict with the decision in this case or justify further review here.

Second, the Acting Solicitor General has recently authorized a petition for rehearing and suggestion for rehearing en banc in *Rose Law Firm*, which is due to be filed by October 4, 1985. Accordingly, the judgment of the court of appeals in *Rose Law Firm* is not yet final and provides no basis for a claim of conflict calling for the Court's review at this time.

Respectfully submitted.

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OCTOBER 1985

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